

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 MARGARET ANN LAFKO,  
Supervising Deputy Attorney General  
3 RONALD A. CASINO, State Bar No. 70410  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101

6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2068  
Facsimile: (619) 645-2061

8 Attorneys for Complainant  
9

10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 2007-88

14 HEIDI NICOLE BUTLER aka HEIDI N.  
BUTLER  
15 7486 La Jolla Blvd., PMB 445  
La Jolla, Ca. 92037

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

16 Registered Nurse License No. 551828

17 Respondent.  
18

19  
20 **FINDINGS OF FACT**

21 1. On or about October 10, 2006, Complainant Ruth Ann Terry, M.P.H, R.N,  
22 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
23 of Consumer Affairs, filed Accusation No. 2007-88 against HEIDI NICOLE BUTLER aka  
24 HEIDI N. BUTLER (Respondent) before the Board of Registered Nursing.

25 2. On or about February 9, 1999, the Board of Registered Nursing (Board)  
26 issued Registered Nurse License No. 551828 to Respondent. The Registered Nurse License was  
27 in full force and effect at all times relevant to the charges brought herein and will expire on  
28 April 30, 2008, unless renewed.

1                   3.       On or about October 31, 2006, Kim Cooney, an employee of the  
2 Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 2007-  
3 88, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code  
4 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which  
5 was and is 7486 La Jolla Blvd., PMB 445, La Jolla, Ca. 92037. A copy of the Accusation, the  
6 related documents, and Declaration of Service are attached as Exhibit A, and are incorporated  
7 herein by reference.

8                   4.       Service of the Accusation was effective as a matter of law under the  
9 provisions of Government Code section 11505, subdivision (c).

10                  5.       Neither the Certified mailing nor the First Class mailing to Respondent's  
11 address of record was returned by the U.S. Postal Service.

12                  6.       Government Code section 11506 states, in pertinent part:

13                   (c) The respondent shall be entitled to a hearing on the merits  
14 if the respondent files a notice of defense, and the notice shall be  
15 deemed a specific denial of all parts of the accusation not expressly admitted.  
Failure to file a notice of defense shall constitute a waiver of respondent's  
right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

16                  7.       Respondent failed to file a Notice of Defense within 15 days after service  
17 upon her of the Accusation, and therefore waived her right to a hearing on the merits of  
18 Accusation No. 2007-88.

19                  8.       California Government Code section 11520 states, in pertinent part:

20                   (a) If the respondent either fails to file a notice of defense or to  
21 appear at the hearing, the agency may take action based upon the respondent's  
22 express admissions or upon other evidence and affidavits may be used as  
evidence without any notice to respondent.

23                  9.       Pursuant to its authority under Government Code section 11520, the Board  
24 finds Respondent is in default. The Board will take action without further hearing and, based on  
25 Respondent's express admissions by way of default and the evidence before it, finds that the  
26 allegations in Accusation No. 2007-88 are true. The evidence before the Board includes  
27 Accusation No. 2007-88, as well as the certified records of conviction for the April 21, 2005  
28 Penal Code (PC) section 415(1) (fighting in public) conviction, the December 1, 2004 PC 459

1 (commercial burglary) conviction, and the October 14, 2004 PC 488/484(a) (petty theft)  
2 conviction. The evidence also includes the arrest reports for the May 23, 2006 arrest for  
3 possession and use of Methamphetamine and the June 5, 2004 arrest for use of  
4 Methamphetamine.

5 10. The total costs for the enforcement of the case are \$8,054.50. These costs  
6 are set forth in the Certification of Prosecution Costs which is attached as Exhibit B, and is  
7 incorporated herein by reference. There are no investigation costs.

8 **DETERMINATION OF ISSUES**

9 1. Based on the foregoing findings of fact, Respondent Heidi Nicole Butler,  
10 aka Heidi N. Butler, has subjected her Registered Nurse License, No. 551828, to discipline.

11 2. A copy of the Accusation, the related documents and Declaration of  
12 Service are attached.

13 3. The Certification of Prosecution Costs is attached.

14 4. The agency has jurisdiction to adjudicate this case by default.

15 5. The Board of Registered Nursing is authorized to revoke Respondent's  
16 Registered Nurse License based upon the following violations alleged in the Accusation:

17 a. First Cause for Discipline: April 21, 2005 criminal conviction for a violation  
18 of PC section 415(1) (fighting in public), under the authority of Code sections 490, 493, and  
19 2761(f).

20 b. Second Cause for Discipline: December 1, 2004 criminal conviction for a  
21 violation of PC section 459 (commercial burglary), under the authority of Code sections 490,  
22 493, and 2761(f).

23 c. Third Cause for Discipline: October 14, 2004 criminal conviction for a  
24 violation of PC section 488/484(a) (petty theft), under the authority of Code sections 490, 493,  
25 and 2761(f).

26 d. Fourth Cause for Discipline: May 23, 2006 possession of a controlled  
27 substance (Methamphetamine), under the authority of Code sections 2761(a) and 2762(a).

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1 e. Fifth Cause for Discipline: May 23, 2006 use of Methamphetamine, under the  
2 authority of Code sections 2761(a) and 2762(b).

3 f. Sixth Cause for Discipline: June 5, 2004 use of Methamphetamine, under the  
4 authority of Code sections 2761(a) and 2762(b).

5 **ORDER**

6 IT IS SO ORDERED that Registered Nurse License No. 551828, heretofore  
7 issued to Respondent Heidi Nicole Butler, aka Heidi N. Butler, is revoked.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may  
9 serve a written motion requesting that the Decision be vacated and stating the grounds relied on  
10 within seven (7) days after service of the Decision on Respondent. The agency in its discretion  
11 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the  
12 statute.

13 This Decision shall become effective on September 29, 2007.

14 It is so ORDERED August 29, 2007

15 *LaTranene W Tate*

16 FOR THE BOARD OF REGISTERED NURSING  
17 DEPARTMENT OF CONSUMER AFFAIRS

18  
19  
20 80134706.wpd

21 DOJ docket number:SD2005700868

22 **Attachments:**

23 Exhibit A: Accusation No. 2007-88, Related Documents, and Declaration of Service  
24 Exhibit B: Certification of Prosecution Costs  
25  
26  
27  
28

Exhibit A

Accusation No. 2007-88,  
Related Documents and Declaration of Service

BILL LOCKYER, Attorney General  
of the State of California  
MARGARET ANN LAFKO, State Bar No. 105921  
Lead Supervising Deputy Attorney General  
RONALD A. CASINO, State Bar No. 70410  
Deputy Attorney General  
California Department of Justice  
110 West "A" Street, Suite 1100  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2068  
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Attorneys for Complainant

**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2007-88

**HEIDI NICOLE BUTLER aka  
HEIDI N. BUTLER**  
7486 La Jolla Boulevard, PMB 445  
La Jolla, California 92037

**A C C U S A T I O N**

Registered Nurse License No. 551828

Respondent.

Ruth Ann Terry, M.P.H., R.N., ("Complainant") alleges:

**PARTIES**

1. Complainant brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

**License History**

2. On or about February 9, 1999, the Board of Registered Nursing issued Registered Nurse License Number 551828 to HEIDI NICOLE BUTLER ("Respondent"). The

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1 license was in full force and effect at all times relevant to the charges brought herein and will  
2 expire on April 30, 2008, unless renewed.

### 3 STATUTORY PROVISIONS

4 3. Section 482 of the Business and Professions Code ("Code") states:

5 Each board under the provisions of this code shall develop criteria  
6 to evaluate the rehabilitation of a person when:

7 (a) Considering the denial of a license by the board under Section 480; or

8 (b) Considering suspension or revocation of a license under Section 490.  
9 Each board shall take into account all competent evidence of rehabilitation  
10 furnished by the applicant or licensee.

11 4. Section 490 of the Code states:

12 A board may suspend or revoke a license on the ground that the licensee  
13 has been convicted of a crime, if the crime is substantially related to the  
14 qualifications, functions, or duties of the business or profession for which  
15 the license was issued. A conviction within the meaning of this section  
16 means a plea or verdict of guilty or a conviction following a plea of nolo  
17 contendere. Any action which a board is permitted to take following the  
18 establishment of a conviction may be taken when the time for appeal has  
19 elapsed, or the judgment of conviction has been affirmed on appeal, or  
20 when an order granting probation is made suspending the imposition of  
21 sentence, irrespective of a subsequent order under the provisions of Section  
22 1203.4 of the Penal Code.

23 5. Section 493 of the Code states, in pertinent part:

24 Notwithstanding any other provisions of law, in a proceeding  
25 conducted by a board within the department pursuant to law to deny an  
26 application for a license or to suspend or revoke a license or otherwise  
27 take disciplinary action against a person who holds a license, upon the  
28 ground that the applicant or the licensee has been convicted of a crime  
substantially related to the qualifications, functions, and duties of the  
licensee in question, the record of conviction of the crime shall be  
conclusive evidence of the fact that the conviction occurred, but only  
of the fact, and the board may inquire into the circumstances surrounding  
the commission of the crime in order to fix the degree of discipline or  
to determine if the conviction is substantially related to the qualifications,  
functions, and duties of the licensee in question. . . .

6. Section 2750 of the Code provides, in pertinent part, that the Board may  
discipline any licensee, including a licensee holding a temporary or an inactive license, for any  
reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the code provides, in pertinent part, that the expiration of  
a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding

1 against the licensee or to render a decision imposing discipline on the license. Under Code  
2 section 2811, subdivision (b), the Board may renew an expired license at any time within eight  
3 years after the expiration.

4 8. Section 118, subdivision (b), of the Code provides that the suspension,  
5 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to  
6 proceed with a disciplinary action during the period within which the license may be renewed,  
7 restored, reissued or reinstated.

8 9. Section 2761 of the Code states, in pertinent part:

9 The board may take disciplinary action against a certified or  
10 licensed nurse or deny an application for a certificate or license for  
any of the following:

11 (a) Unprofessional conduct, . . . .

12 (f) Conviction of a felony or of any offense substantially  
13 related to the qualifications, functions, and duties of a registered  
14 nurse, in which event the record of the conviction shall be  
conclusive evidence thereof.

15 10. Section 2762 of the Code states, in pertinent part:

16 In addition to other acts constituting unprofessional conduct within  
17 the meaning of this chapter, it is unprofessional conduct for a person  
licensed under this chapter to do any of the following:

18 (a) Obtain or possess in violation of law, or prescribe, or  
19 except as directed by a licensed physician and surgeon, dentist, or  
20 podiatrist, administer to himself or herself, or furnish or administer  
to another, any controlled substance as defined in Division 10  
(commencing with Section 11000) of the Health and Safety Code  
or any dangerous drug or dangerous device as defined in Section 4022.

21 (b) Use any controlled substance as defined in Division 10  
22 (commencing with Section 11000) of the Health and Safety Code,  
or any dangerous drug or dangerous device as defined in Section 4022,  
23 or alcoholic beverages, to an extent or in a manner dangerous or  
injurious to himself or herself, any other person, or the public or  
24 to the extent that such use impairs his or her ability to conduct with  
safety to the public the practice authorized by his or her license.

25 (c) Be convicted of a criminal offense involving the prescription,  
26 consumption, or self-administration of any of the substances described  
in subdivisions (a) and (b) of this section, or the possession of, or  
27 falsification of a record pertaining to, the substances described in  
subdivision (a) of this section, in which event the record of the  
28 conviction is conclusive evidence thereof.



11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## REGULATIONS

12. Section 1444 of Title 16 of the California Code of Regulations ("Regulations") states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. Section 1445 of the Regulations states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crimes(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted

1 of a crime, the board, in evaluating the rehabilitation of such  
2 person and his/her eligibility for a license will consider the  
following criteria:

3 (1) Nature and severity of the act(s) or offense(s).

4 (2) Total criminal record.

5 (3) The time that has elapsed since commission of the act(s)  
6 or offense(s).

7 (4) Whether the licensee has complied with any terms of  
8 parole, probation, restitution or any other sanctions lawfully  
imposed against the licensee.

9 (5) If applicable, evidence of expungement proceedings  
pursuant to Section 1203.4 of the Penal Code.

10 (6) Evidence, if any, of rehabilitation submitted by the licensee.

11 **CRIMINAL CONVICTIONS**

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(April 21, 2005 Criminal Conviction - Fighting in  
14 Public or Challenging Another in a Public Place  
to Fight on April 8, 2005)**

15 14. Respondent is subject to disciplinary action under Code sections 490, 493,  
16 and 2761, subdivision (f), in that Respondent has been convicted of a crime substantially related  
17 to the qualifications, functions or duties of a registered nurse, as set forth below.

18 15. On or about April 21, 2005, in the Superior Court of California, County of  
19 San Diego, in the case entitled *People of the State of California v. Heidi Butler*, Case No.  
20 M958676, Respondent was convicted by the court on her plea of no contest of violating Penal  
21 Code section 415, subdivision (1) (fighting in public or challenging another in a public place to  
22 fight), a misdemeanor. The facts and circumstances of the conviction are as follows.

23 16. On or about April 8, 2005, in the City of La Jolla, California, Respondent  
24 fought in public or challenged another in a public place to fight.

25 17. On or about April 21, 2005, Respondent was sentenced to twenty one (21)  
26 days custody.

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**SECOND CAUSE FOR DISCIPLINE**  
**(December 1, 2004 Criminal Conviction -  
Burglary on November 25, 2004)**

18. Respondent is subject to disciplinary action under Code sections 490, 493, and 2761, subdivision (f), in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a registered nurse, as set forth below.

19. On or about December 1, 2004, in the Superior Court of California, County of San Diego, in the case entitled *People of the State of California v. Heidi Butler*, Case No. C245593, Respondent was convicted by the court on her plea of guilty of violating Penal Code section 459 (burglary), as a misdemeanor pursuant to Penal Code section 17b(4). The facts and circumstances of the conviction are as follows.

20. On or about November 25, 2004, Respondent unlawfully entered a Rite Aid drug store in El Cajon, California with the intent to obtain Norco (a Schedule III controlled substance) by passing a fraudulent prescription.

21. On or about December 1, 2004, Respondent was sentenced to three (3) years summary probation, 365 days custody (345 days of which were stayed), and a \$100.00 restitution fine (stayed).

**THIRD CAUSE FOR DISCIPLINE**  
**(October 14, 2004 Criminal Conviction - Petty Theft  
on March 13, 2004)**

22. Respondent is subject to disciplinary action under Code sections 490, 493, and 2761, subdivision (f), in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a registered nurse, as set forth below.

23. On or about October 14, 2004, in the Superior Court of California, County of San Diego, in the case entitled *People of the State of California v. Heidi N. Butler*, Case No. M923923, Respondent was convicted by the court on her plea of guilty of violating Penal Code section 488/484, subdivision (a) (petty theft), a misdemeanor. The facts and circumstances of the conviction are as follows.

24. On or about March 13, 2004, in the City of La Jolla, California, Respondent was cited for stealing at Vons Supermarket.

1                   25.     On or about October 14, 2004, Respondent was sentenced to three (3)  
2 years summary probation, one (1) day custody, a \$578.00 fine, and a shoplifting course.

3                                   **MAY 23, 2006 ARREST**

4                   26.     On or about may 23, 2006, police responded to a report of Respondent  
5 entering a stranger's vehicle and refusing to get out. On arrival, police found Respondent to be  
6 agitated and irrational. Further, she exhibited several indicia of being under the influence of a  
7 stimulant. Upon arresting Respondent, police found her to be in possession of .79 grams of  
8 Methamphetamine. Respondent told police that she had purchased the Methamphetamine the  
9 night before, used 2 to 3 lines of it 30 minutes prior to the arrest, and had used Methamphetamine  
10 on and off since she was 16 years old.

11                                   **FOURTH CAUSE FOR DISCIPLINE**  
12                                   **(Possession of a Controlled Substance)**

13                   27.     Respondent is subject to disciplinary action under Code sections 2761,  
14 subdivision (a), and 2762, subdivision (a), in that on or about May 23, 2006, Respondent  
15 possessed a controlled substance , to wit: Methamphetamine, as set forth in paragraph 26 above.

16                                   **FIFTH CAUSE FOR DISCIPLINE**  
17                                   **(Use of a Controlled Substance)**

18                   28.     Respondent is subject to disciplinary action under Code sections 2761,  
19 subdivision (a), and 2762, subdivision (b), in that on or about May 23, 2006, Respondent used a  
20 controlled substance, to wit: Methamphetamine, as set forth in paragraph 26 above.

21                                   **JUNE 5, 2004 ARREST**

22                   29.     On or about June 5, 2004, police responded to a report of Respondent  
23 behaving violently by breaking things inside a residence. On arrival, police found Respondent to  
24 be agitated and irrational. Further, she exhibited several indicia of being under the influence of a  
25 controlled substance, to wit: Methamphetamine. Upon arresting Respondent, police found her to  
26 be in possession of narcotics paraphernalia, to wit: a red straw cut into two halves with a white  
27 residue on the tips. Respondent admitted that she was "on drugs." A blood sample taken from  
28 Respondent was found to contain Methamphetamine.

1 SIXTH CAUSE FOR DISCIPLINE  
2 (Use of a Controlled Substance)

3 30. Respondent is subject to disciplinary action under Code sections 2761,  
4 subdivision (a), and 2762, subdivision (b), in that on or about June 5, 2004, Respondent used a  
5 controlled substance, to wit: Methamphetamine, as set forth in paragraph 29 above.

6 PRAAYER


7 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
8 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

9 1. Revoking or suspending Registered Nurse License Number 551828 issued  
10 to HEIDI NICOLE BUTLER, also known as HEIDI N. BUTLER;

11 2. Ordering HEIDI NICOLE BUTLER, also known as HEIDI N. BUTLER,  
12 to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement  
13 of this case, pursuant to Code section 125.3; and,

14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: 10/10/06

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17   
18 RUTH ANN TERRY, M.P.H., R.N.,  
19 Executive Officer  
20 Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

21 RAC:kc  
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